

OFFICE OF THRIFT SUPERVISION

Approval of Charter Conversion, Holding Company Acquisition and Related Applications

Order No.: 2003-07

Date: February 27, 2003

**Docket Nos.: 3874, H-3901, H-3937, H-3938,
H-3939 and H-3940**

Shay Investment Services, Inc., Miami, Florida (Holding Company), Rodger D. Shay, Rodger D. Shay, Jr., and Ryan E. Shay (Control Group), and Rodger D. Shay Declaration of Trust, Rodger D. Shay Irrevocable Trust, Rodger D. Shay, Jr. Declaration of Trust, and Rodger D. Shay, Jr. Irrevocable Trust (collectively, Applicants) have applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3 to acquire Iberville Building and Loan Association, Plaquemine, Louisiana (Association), and for the Association, a SAIF-insured Louisiana stock savings association, to convert to a federal savings bank pursuant to 12 C.F.R. § 552.2-6. In addition, the Applicants seek OTS approval to transfer all of the common stock of First Financial Trust Company, Irving, Texas (Trust Co.) to the Association pursuant to 12 C.F.R. § 563.22(c), and for the Association to establish the Trust Co. as an operating subsidiary pursuant to 12 C.F.R. § 559.11, and for the Association to also establish an agency office pursuant to 12 C.F.R. § 545.96. (Collectively, the various filings are referred to herein as the Applications.)

The Applications

In the proposed transaction, the Applicants contemplate that the Association will become a wholly owned subsidiary of the Holding Company. The Holding Company will incorporate a wholly owned Louisiana corporation that will merge with the Association's holding company, IBL Bancorp, Plaquemine, Louisiana (Bancorp). Bancorp will survive the merger, but immediately thereafter, Bancorp will be dissolved with the Association becoming a wholly owned direct subsidiary of the Holding Company. Immediately following the acquisition, the Association will convert to a federal savings bank, and the Holding Company will transfer all of Trust Co.'s common stock to the Association, causing Trust Co. to become an operating subsidiary of the Association. The Association will also establish an agency office in Miami, Florida that will perform custodial and administrative services. The Association will be a federally chartered, SAIF-insured, savings association subsidiary of the Holding Company after the transaction, and change its name to First Financial Bank and Trust Co.

Holding Company Application

In the proposed transaction, the Applicants will acquire the Association. Accordingly, the transaction requires OTS approval under Section 10(e) of the Home Owners' Loan Act (HOLA) and under 12 C.F.R. Part 574 (Control Regulations).

Section 10(e)(1)(B) of the HOLA and the Control Regulations provide that OTS must approve a holding company application seeking permission to acquire one savings association by a company other than a savings and loan holding company unless OTS finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the savings association or to the insurance risk of the Savings Association Insurance Fund (SAIF). Also, OTS must consider the impact of any acquisition on competition.¹ Further, 12 C.F.R. § 563e.29(a) requires that OTS take into account assessments under the Community Reinvestment Act (CRA) when approving savings and loan holding company acquisitions.

With respect to the Control Group, section 10(h)(2) of the HOLA² provides that it is unlawful for any director of a savings and loan holding company to acquire control of a savings association not a subsidiary of such savings and loan holding company, unless OTS approves the acquisition pursuant to section 10(e)(4) of the HOLA.³ Section 10(e)(4)(A) repeats the substance of section 10(h)(2), providing for OTS approval of acquisitions described in section 10(h)(2). Section 574.3(a) of the Control Regulations restates the statutory approval requirement.

Mr. Rodger D. Shay, a member of the Control Group, is a director of Horizon Financial Corp., a savings and loan holding company located in Pembroke Pines, Florida. The Control Group, in the proposed transaction, would acquire indirect control of the Association, which is not a subsidiary of Horizon Financial Corp. Accordingly, the proposed transaction requires OTS approval under HOLA section 10(e)(4). OTS regulations, at 12 C.F.R. § 574.7(b) and (c), require OTS to consider the same factors that it considers in connection with acquisitions by companies other than savings and loan holding companies, and to consider the convenience and needs of the communities to be served.

With respect to managerial resources, the Association's board of directors and executive officers will consist of the Association's present directors and executive officers, all of whom have served for more than one year, and two additional directors proposed by the Applicants. OTS has considered the background of the Applicants, the Association's board of directors and senior officers, the two proposed directors and the Applicants' senior executive officers and directors. Based on the foregoing, OTS

¹ 12 U.S.C. § 1467a(e)(2) and 12 C.F.R. § 574.7(c)(2) (2002).

² 12 U.S.C. § 1467a(h)(2).

³ 12 U.S.C. § 1467a(e)(4).

concludes that the managerial resources of the Association and the Applicants are consistent with approval for the reasons discussed above.

With respect to financial resources, OTS has considered the Applicants' financial position, and the Association's proposed capitalization and business plan. As of December 31, 2002, the Association reported a Tier 1 capital ratio of 10.95 percent and total risk-based capital ratio of 22.87 percent. The proposed capitalization is projected to increase the Tier 1 and total risk-based capital levels to 16.53 and 32.34 percent, respectively. OTS concludes that the financial resources of the Association and the Applicants are consistent with approval.

With respect to future prospects, OTS has considered the financial and managerial resources of the Association and the Applicants, and the probability of the Association's usefulness and success, and concludes that the future prospects of the Association and the Applicants are consistent with approval, subject to the conditions set forth below.

With respect to the competitive impact of the transaction, the Association will continue as a competitor in the relevant market. In addition, the proposed acquisition will not cause the Association to become affiliated with any other operating depository institution that accepts insured deposits, or engages in lending activities. Accordingly, OTS concludes that the transaction is not objectionable on anti-competitive grounds.

As for the CRA, the Applicants and their subsidiaries have no CRA experience. OTS has received no comments from the public objecting to the proposed transaction. The Association's CRA statement will not be revised, and the Association will continue to serve the financial needs of the community. Accordingly, OTS concludes that approval of the proposed acquisition of the Association by the Applicants is consistent with the CRA.

The Association will continue to be a community-oriented financial institution serving central Louisiana through its single office location, and will offer the products it has previously offered. Accordingly, OTS concludes that the approval of the application is consistent with the convenience and needs of the communities to be served.

Section 401 of the Gramm-Leach Bliley Act⁴ added § 10(c)(9) of HOLA, which provides in part that no company may directly or indirectly acquire control of a savings association after May 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted: (i) under § 10(c)(1)(C) or 10(c)(2) of the HOLA; or (ii) for financial holding companies under 12 U.S.C. §1843(k). The Applications indicate that the Applicants are engaged only, directly or indirectly, in activities that satisfy the requirements of § 10(c)(9), except for the operations of R.D. Shay, Inc.; a Florida corporation that provides travel agency services for the general public. Stand-alone

⁴ P.L. 106-102 (Nov. 12, 1999), 113 Stat. 1338.

travel agencies, which are not integrated with financial services of a financial holding company or other entity, do not qualify under 12 U.S.C. § 1843(k)(4) and under the Federal Reserve Board's regulations at 12 C.F.R. § 225.86(b)(2). Accordingly, the Applicants must divest ownership of the travel agency subsidiary within two years of approval.

Charter Conversion Application

Sections 552.2-6 of the OTS regulations address conversions of any stock depository institution to a federal stock charter. Specifically, sections 552.2-6 provide that with OTS approval, "any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank, may convert to a federal stock association, provided that the depository institution, at the time of the conversion, has deposits insured by the Federal Deposit Insurance Corporation, and provided further, the depository institution, in accomplishing the conversion, complies with all applicable statutes and regulations, including without limitation, section 5(d) of the Federal Deposit Insurance Act (FDIA)."⁵ The regulations also provide that a federal stock association resulting from a charter conversion must comply with the requirements of 5(c) of the FDIA within the time period prescribed by OTS.

The proposed conversion conforms to the requirements of Section 552.2-6 of the OTS regulations. At the time of conversion, the Association will be a SAIF-insured, state-chartered savings association. Section 552.13(b)(4) defines "depository institution" to include state-chartered savings associations. Upon conversion to a federal savings bank, the Association's deposits will continue to be insured by the SAIF. The Association is a member of the Federal Home Loan Bank of Dallas. The Association does not have any investments or assets that would be impermissible for a federal association.

The HOLA provides that OTS may grant a federal savings association charter only: (i) to persons of good character and responsibility; (ii) if, in OTS' judgment, a necessity for such savings association exists in the community to be served; (iii) if there is reasonable probability of the association's usefulness and success; and (iv) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.⁶ OTS regulations implementing the HOLA include the same standards, with the additional requirement that OTS consider whether the association will promote credit for housing consistent with the safe and sound operation of a federal savings association.⁷

In addition, OTS regulations provide that an applicant for a federal thrift charter shall submit with its application a description of how it will meet its CRA objectives.⁸

⁵ 12 C.F.R. § 552.2-6 (2002).

⁶ Section 5(e) of the HOLA, 12 U.S.C. § 1464(e).

⁷ 12 C.F.R. § 552.2-1(b)(1) (2002).

⁸ 12 C.F.R. § 563e.29(b) (2002).

OTS takes this description into account when considering an application and may deny an application or condition approval on CRA grounds.

With respect to the character and responsibility of the Applicants and the Association, the Association's board of directors and executive officers will consist of the Association's present directors and executive officers, all who have served for more than one year, and two additional directors proposed by the Applicants. OTS has considered the background of the Applicants, the Association's board of directors and senior officers, the two proposed directors and the Applicants' senior executive officers and directors. OTS concludes the character and responsibility of the Applicants and the Association is consistent with approval.

With respect to the necessity for the Association in the community, and undue injury to properly conducted existing local thrift and home financing institutions, the Association will continue its present business activities. Based on the Association's current activities, OTS concludes that there is a necessity in the community for the Association, and that the continuation of the Association's services will not result in undue harm to existing institutions.

With respect to the Association's usefulness and success, OTS has reviewed the Association's business plan, historical data on the Applicants and the Association, the Association's proposed capital levels, and the competence of management. OTS concludes that the Association's probability of usefulness and success is consistent with approval.

With respect to the provision of credit for housing, OTS has considered the manner in, and extent to which, the Association will provide credit for housing, and concludes that the Association will perform a role of providing credit for housing consistent with safety and soundness standards.

With respect to CRA, OTS has reviewed the manner in which the Association will meet its CRA objectives and found its description to be reasonable. OTS concludes that the Association's plans for meeting its CRA requirements are consistent with approval.

In addition, the Association intends to adopt a charter and bylaws in compliance with the model charter and bylaws for a federal stock institution.

Transfer Application

The Association has applied to acquire all of the Trust Co.'s common stock. Section 563.22(c) of OTS' regulations prohibits such a transfer without the OTS approval. Section 563.22(d) of OTS' regulations provides that in considering a transfer application OTS will consider: (i) the capital levels of the resulting association; (ii) the financial and managerial resources of the constituent institutions; (iii) their future prospects; (iv) the convenience and needs of the communities to be served; (v) the

competitive impact of the transaction; (vi) the conformity of the transaction to applicable laws, regulations and OTS policies; and (vii) whether the transaction is fair and equitable.

As discussed above, after the transaction is consummated, the Association will be the resulting institution and will meet all capital requirements, and have adequate financial and managerial resources. There is sufficient information to conclude that the future prospects of the Association are consistent with approval. The Association will continue to be a community-oriented financial institution serving central Louisiana through its single office location. Therefore, the transaction will not have an immediate effect on communities to be served. The transfer will have no competitive impact because the Association will continue as a competitor in the relevant market, and will not cause the Association to become affiliated with any other depository institution that accepts insured deposits, or engages in lending activities, and it appears that the transaction will comply with applicable laws, regulations and regulatory policies.

Further, the fairness of the contribution of Trust Co. to the Association is consistent with approval, because the transaction is an internal reorganization involving only entities controlled by the Applicants. Accordingly, OTS concludes that the application meets the approval criteria.

Operating Subsidiary Application

A federal association generally may invest in an operating subsidiary if: (1) the operating subsidiary engages only in activities permissible for federal associations to engage in directly; (2) the federal association owns, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary; and (3) no person or entity other than the federal association may exercise operating control over the operating subsidiary.⁹ In addition, OTS may, at any time, limit a savings association's investment in operating subsidiaries, or may limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety and soundness reasons.¹⁰

With respect to the specific regulatory criteria, OTS concludes that the Trust Co., which administers, on a non-discretionary basis, certain assets, and acts as the safekeeping institution for the Applicants' certificate of deposit (CD) customers, engages only in activities permissible for a federal association. The Association will hold all of the common stock of the Trust Co., and we are not aware of any information indicating that the Association will not have sole operating control of the Trust Co.

With respect to supervisory considerations, OTS has reviewed Trust Co.'s examination report and has no objection on supervisory grounds to the proposed transaction.

⁹ 12 C.F.R. § 559.2, 559.3(c)(1) and (e)(1) (2002).

¹⁰ 12 C.F.R. § 559.1(a) (2002).

Based on the foregoing, OTS concludes that the application meets the relevant approval criteria.

Agency Office

Pursuant to 12 C.F.R. § 545.96(b), the Applicants have submitted an agency office application for the establishment of an agency office to be located in Miami, Florida. The agency office will be located within the main office of the Holding Company, will serve the Association as the location for the custodial and safekeeping activities in connection with CD's that are held by Trust Co. from the Applicants' CD desk and administrative activities in connection with the custodial and safekeeping activities of this service, and will be open to the public. OTS does not object to the establishment of the agency office.

Conclusions

Based on the foregoing analysis, OTS concludes that the Applications meet the applicable approval criteria, provided that the following conditions are imposed. Accordingly, the Applications are hereby approved, provided that the following conditions are complied with in a manner satisfactory to the OTS Midwest Regional Director, or his designee (Regional Director):

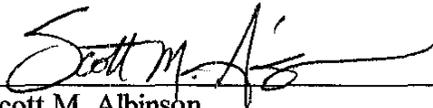
1. The Applicants and the Association must receive all required regulatory approvals prior to consummation of the proposed transaction with copies of all such approvals provided to the Regional Director;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Applicants, the Association and Bancorp must certify in writing to the Regional Director that no material adverse changes have occurred with respect to the financial condition or operation of the respective entities as disclosed in the Applications. If additional information having an adverse bearing on any feature of the Applications is brought to the attention of the Applicants, the Association, Bancorp, or OTS since the date of the financial statements submitted with the Applications, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;
4. The Applicants and the Association must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the proposed transaction was consummated in accordance with all applicable laws and regulations, the Applications and this Order;

5. The Association must operate within the parameters of its business plan filed in the Applications. For the three year period following consummation of the transaction, the Applicants and the Association must provide notice of any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Applicants), and in particular, those pertaining to cross-marketing of products by the Association and its affiliates, for the prior, written non-objection of the Regional Director. The request for change must be submitted a minimum of 60 calendar days before the proposed change is implemented;
6. At least 40 percent of the Association's board of directors must be individuals who are not officers or employees of the Applicants or their affiliates, as defined under OTS' Transaction With Affiliates regulations, and who have not otherwise been determined by the Regional Director to lack sufficient independence; and at least one member of the Association's board of directors must be an individual who is not an officer, director or employee of the Applicants or their affiliates and who is not an officer or employee of the Association, and has not otherwise been determined by the Regional Director to lack sufficient independence. At least 50 percent of any audit committee established by the Association must be directors who are not officers or employees of the Association, the Applicants or their affiliates and have not otherwise been determined by the Regional Director to lack sufficient independence. If compliance with this condition involves the selection of additional directors, each director must receive the prior written approval of the Regional Director;
7. A majority of the Association's board of directors must not be individuals who are directors or employees of any affiliate of the Association, as defined under OTS' Transaction With Affiliates regulations, that engages in securities brokerage, securities dealing, investment company, or investment advisor activities (Securities Affiliate(s));
8. The Association is prohibited from sharing common officers with any Securities Affiliate unless prior written approval is obtained from the Regional Director, which shall be based on criteria such as regulatory compliance, experience, character, integrity and the ability to perform both duties;
9. The Applicants, their affiliates and the Association must comply with the anti-tying restrictions of 12 U.S.C. §§ 1464(q) and 1467a(n) and must develop written procedures to effect such compliance prior to the commencement of any cross-marketing activity;
10. For the first eighteen months after the consummation date of the proposed transaction, any contracts or agreements pertaining to transactions with affiliates not yet submitted to the OTS for review, must be submitted for the prior written non-objection of the Regional Director at least 30 calendar days prior to execution;

11. For the first two years after the consummation date of the proposed transaction, the Association must receive the prior written non-objection of the Regional Director for any proposed new directors or senior executive officers or any significant change in responsibilities of any senior executive officer; and
12. The Holding Company must divest ownership of R.D. Shay, Inc. within two years of this approval.

Any time period set forth herein may be extended for up to 120 calendar days, for good cause, by the Regional Director.

By order of the Director of the Office of Thrift Supervision, or his designee,
effective February 27, 2003.



Scott M. Albinson
Managing Director
Office of Supervision